BEST COPY
AVAILABLE

MONTANA LEGISLATIVE HISTORY

Chapter 524 19 85

Bill H _____ S 412 Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 25	✓C	Hearing Date(s)	Feb 21	✓C
		C		Feb 22	✓C
		C			C
		C			C
Date Out	Mar 25	✓C		Feb 22	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE
4/13 2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED 93
4/13 3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED 94
4/17 SIGNED BY PRESIDENT
4/17 SIGNED BY SPEAKER

4/18 TRANSMITTED TO GOVERNOR
4/23 SIGNED BY GOVERNOR
CHAPTER NUMBER 612 EFFECTIVE DATE: 4/23/

SB 412 INTRODUCED BY E. SMITH, NATHE, MILES, ET AL.
MANDATORY 30 DAYS IN JAIL FOR CERTAIN CHILD ABUSE OFFENSES

2/13 INTRODUCED
2/14 REFERRED TO JUDICIARY
2/21 HEARING
2/23 COMMITTEE REPORT-BILL PASS AS AMENDED
2/26 2ND READING PASS 44
2/27 3RD READING PASS 50

TRANSMITTED TO HOUSE
3/06 REFERRED TO JUDICIARY
3/25 HEARING
3/25 COMM REPORT-BILL CONCURRED AS AMENDED
3/30 2ND READING CONCURRED 90
4/01 3RD READING CONCURRED 97

RETURNED TO SENATE WITH AMENDMENTS
4/03 2ND READING AMENDMENTS CONCURRED 50
4/05 3RD READING AMENDMENTS CONCURRED 45
4/12 SIGNED BY PRESIDENT
4/15 SIGNED BY SPEAKER

4/15 TRANSMITTED TO GOVERNOR
4/18 SIGNED BY GOVERNOR
CHAPTER NUMBER 524 EFFECTIVE DATE: 10/01/

SB 413 INTRODUCED BY HALLIGAN
LOCAL GOVERNMENT REVENUE BONDS - GUARANTEE BY IN-STATE INVESTMENT FUND

2/13 INTRODUCED
2/14 REFERRED TO BUSINESS & INDUSTRY
2/14 FISCAL NOTE REQUESTED
2/19 FISCAL NOTE RECEIVED
2/19 HEARING
2/20 TABLED IN COMMITTEE

SB 414 INTRODUCED BY TOWE
PUBLIC ADMINISTRATOR TO BE APPOINTED CONSERVATOR OF CERTAIN SSI RECIPIENTS

2/13 INTRODUCED
2/14 REFERRED TO JUDICIARY
2/20 HEARING
2/22 COMMITTEE REPORT-BILL DO PASS

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 21, 1985

The thirty-sixth meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on February 21, 1985, by Chairman Joe Mazurek in Rooms 413-415 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF SB 412: Senator Ed Smith, sponsor of SB 412, presented written testimony to the committee (Exhibit 1). In addition, Senator Smith presented a letter which he had received concerning the subject matter of this bill and requested that this letter be distributed to the committee members (Exhibit 2).

PROPONENTS: Representative Dennis Nathe testified in support of the bill. He stated in these cases, you deal with denial. It's a psychological problem, and they do not believe they have a problem. As our laws stand now, for each offense they are convicted, it carries a penalty of 20 years in prison. He believes we are sending a mixed signal to the public. Their perception of justice is there should be some time served. This tells these people they cannot get off scot-free if they go to a mental health center. North Dakota has a mandatory six months in the state penitentiary. Representative Nathe also testified he has several bills coming from the House that deal with different aspects of this problem.

OPPONENTS: Pastor William Rizer, of St. John's Lutheran Church in Helena, testified on behalf of the Montana Association of Churches. He explained he had the unenviable position of opposing this bill because the Montana Association of Churches is on record as being opposed to mandatory sentencing. He said we could talk about individual cases and how gruesome they are. The natural human tendency is to seek retribution in an effort to get back. At the same time, on the basis of justice, we would be doing a disservice by tying the hands of the judges and not allowing them to respond to the individual cases as they arise.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock addressed Representative Nathe and stated there is no question these things are heinous, and there is a lot of this that is incest within families. Senator Blaylock stated these are sick individuals. He questioned whether he thought that by putting them in jail for 30 days we will help that person or

really get them some help that will change that behavior. Representative Nathe responded imprisonment will not help these people. What the 30-day sentence is for is probably retribution and to let them know they cannot go to Glasgow and be part of the group so they will not have to serve any time. We treat drunk drivers harder. They have to have psychological treatment. His bills address this aspect of it. A parallel can be drawn This problem can never be cured; it can just be controlled. It is similar with people who have a drinking problem. You never cure an alcoholic. He learns how to control it. You cannot do it by locking him up for 20 years; they have to get help.

CLOSING STATEMENT: Senator Smith stated there is nothing personal on his part as far as these individuals are concerned. He believes maybe the best place is to go through our courts, but in some smaller towns and the close relationship between those that committed the crimes and the abused person, that is not always possible. He asked if we wanted this kind of person running loose. This will let them know that when they act like this, they will be placed into the jail or the prison. He believes 30 days is very mild.

Hearing on SB 412 was closed.

CONSIDERATION OF SB 446: Senator Tom Hager, sponsor of the bill, testified this bill provides for the unlawful appropriation of retail property: dairy cases, shopping carts, and egg baskets. Senator Hager suggested amending the bill on page 1, line 18, by inserting the word "permanent." He explained to the committee that these items are very expensive, especially when you have to maintain a large supply.

PROPONENTS: Charles Graveley, attorney for the Montana Food Distributors Association, addressed subsection 2, page 2, line 18. He stated some concern was expressed in other bills that have come before this committee and the House regarding the burden of proof regarding possession of these items. Some feel that prevents a constitutional question as to the defendant (Section 45-6-304, MCA). This section has similar language. It refers to possession of stolen property. It creates a presumption. He commented this is really a terrific expense to the industry. He also addressed the question of why we needed the bill when there is already a theft statute on the books. He explained it is needed because there is no prosecution. He said 17 other states have this type of statute on their books. This bill is from the Florida statutes. There is protection for those who do use the cart to get their groceries home. Frank Copps, Executive Director, Montana Food Distributors Association, testified this addresses a serious problem they have in replacement costs of these items. They need identification of these items spelled out in the law to tell the public it is against

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 02/18/

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

DATE February 21, 1985

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Jess Gracham	Dept. of Livestock	429	X	
Joe Roberts	Attorney General	429	X	
Harold Hanson	Yellowstone County	429	X	
Roy Andes	ACLU	364, 392		X
William Rizer	Mont. Assoc. of Churches	364, 392		X
John L. Ostwald	Mt Catholic Conference	364 392		X
George Allen	Mt. Retail Assn	446	X	
Charles Lansing	Mt Food Dist Assn	446	X	
George Lahood	Mt. Pharmacy Assn	446	X	
Ed McGuirk	Clover Leaf Dairy	446	X	
Lenny Rogers	Mt Food Dist Assn	446	X	
K VANFOSSEN	DARIGOLD FARMS	446	X	
ALAN ROBERTSON	SEC. OF STATE	429		X
Jim Mannon	Montana AAA	417	X	
Tom Hager	Senate	417	X	
"	"	446	X	

(Please leave prepared statement with Secretary)

Mr. Chairman, Members of the Committee, for your record I am Senator Ed Smith, District #10, sponsor of Senate Bill 412.

This legislation is sponsored on behalf of the Northeast Montana Child Sex Abuse Task Force.

Rep. Dennis Nathe requested the drafting of this bill but due to my involvement in a case in our county, Representative Nathe asked me if I would sponsor the bill.

As you will note in the title of this bill there will be a mandatory 30 day jail sentence for anyone convicted of sexual intercourse to anyone under 16 years of age.

Personally, I do not think this is enough for someone who commits this kind of insidious act.

Many states are taking more drastic steps. I am sure that all of the members of this committee realize that there has been a substantial increase in sex acts on children.

The State and National Womens Federation has made child sex abuse their number one issue.

Almost every day one hears or reads of some kind of sex act on children.

I want to tell you about an incident that happened in my own county. One thinks this only happens in a large city--it doesn't.

A year ago last June I was requested to attend a meeting in my

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022185
SB 412

county seat, which is Plentywood - - attending were clergy, parents of victims and one who had been molested several years earlier.

The person involved had just been elected County Commissioner 18 months earlier.

I was asked to get involved by this group and the parents of an 11 year old girl who was molested by this man. Every means was taken to get this person to get treatment. Both the County Attorney and Sheriff's Department were contacted, but neither would take action. I told the group that if I got involved it would be interpreted as being political because this person was of the other political party and I suggested they talk to their State Representative and the Democrat leadership. They did, but nothing was done until in December when I was again contacted to attend a meeting--which I did. At this meeting it was brought out that this person had been molesting young girls over a number of years and one young lady told the group how she had been raped on many occasions beginning when she was just 5 years old. It was decided at this meeting that the group would go to the County Commissioner's office and confront this person, which we did.

Among the group was a young women who had been molested 11 years earlier, the young lady who had been raped at 5 - the parents of the 11 year old girl who was molested within the statute of limitations.

When this man was confronted he did not deny any of the accusations. He was told at that time if he would agree to a 5 year rehabilitation program no charges would be filed. He refused - I was then asked if

I would contact the Attorney General's office to see what other action could be taken. I contacted Marc Racicot, County Prosecutor within the Attorney General's office.

He told me what options the parents of the 11 year old girl had and that the only way he could act was by the request of the County Attorney.

When we confronted the County Attorney he attempted to ignor us until I told him that unless he printed the options that were presented by Mr. Racicot and present them to the parents of the 11 year old girl and let them decide what option they wanted to pursue I would do everything possible to see that he was removed from office. It was only then that the County Attorney acted. An investigator was then called in. When confronted and questioned this person did not deny the charges and agreed to a 5 year suspended sentence and rehabilitation.

In the process it was found that many other girls had been victims of this man and that one of the victims had attempted to commit suicide on several occasions.

Isn't it something that after all of this, this person did not spend one day in jail.

We do not know if this person will be rehabilitated, but it is a proven fact that if someone goes to jail or prison there is a much higher success of rehabilitation.

Personally, I do not believe a30 day mandatory jail sentence is

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022185

enough, but I do believe it is a step in the right direction.

Some states have taken much stronger positions on this type of crime. If this committee wished to do so, I would support it.

After all the misery this person caused, he didn't spend one day in jail! Someone picked up for DUI doesn't get by as easy.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022185
BILL NO. SB 412

P.O. Box 1132
Plentywood, MT 59254
February 19, 1985

Senator Ed Smith
Capitol Station
Helena, MT

RE: Bill #412

Dear Ed:

In respect to our experience as the Sheridan County Sexual Assault Task Force we feel compelled to support Bill #412 after working with and assisting victims of sexual abuse for the past three years.

The effects on the children's personalities and their behavior patterns are evidence that stronger legal procedures must be enforced. To support this opinion, we have several young girls who have been victimized over a period of years by the same offender. This was disclosed in February, 1984 -- as of exactly one year to date (Feb. 21, 1985) of the offenders last known attack, this case has not yet been settled. This, of course, has been very stressful and emotionally upsetting to the victims. One victims grandmother just stated last week "That just isn't my little (name omitted) anymore -- her personality has changed so much."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 022185
SB 412

It has been brought to our attention that by spending time in jail the offender has "thinking time" to realize and perhaps dwell on the abhorrency of the crime they have committed against innocent children. (This can be beneficial in the offenders treatment.)

We, as the Task Force, and many concerned citizens have focused a great deal of time and attention toward better protection of our children. We now need the cooperation of "you" - our law makers.

Thankyou very much.

Sincerely Yours,
Sheridan County Sexual Assault Task Force
Millie Marsh, President
Kordelia French, Sec./Treas.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 022185
BILL NO. SB 412

Ed -

2-19-85

This is Condon's statement - I don't know how much you want to read - But you could inform them that this man is still "very free" and a threat to our community - Because of his past statute law - if that can be mentioned at this time - We have worked very hard to get better protection of our children - Now we need the cooperation of "you" the law makers.

Please send this back to me -

Yours truly,
Millie

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 022185
BILL NO. SB 412

11-17-83 10 a.m. - 12:15 p.m.

Jen During School - April, May
1st grade - staying at Otos, because
Mom + Dad were gone
She wore jeans, Tennis shoes, T-Shirt

Past Hx { He'd come over - he + Kids would ride motorcycles - He pick her up - sit her on the lap. + hold her. If he was sitting close to the table he would rub her legs + crotch

① Vicki Kisler - 3rd grade - making babies was disgusting

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 022185
BILL NO. SB 412

Went to school - After school - Valita - Playing with Kate - Upstairs Valita Curling her hair - Called to supper - Mary was there. Went outside to play - Harvey was in a tractor digging a pit for a party. Harvey, Chris Hon Dale, Harvey was drinking beer. Mary was in the house. "Harvey said, "Let's go collect some wood." Valita said, "I want to go" - Harvey said - "No - 'Cause Kansas is going with me." He picked up Kayndy up & put her in a pickup (Red) Drove up a trail (N) of the house to cross dike & the dam. He drove ~~stopped~~ across the dike + drove a short way and stopped by the trees past the

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 022185
BILL NO. SB 412

like. He said nothing all the time while going to this place. He shut the truck off. There was no wood laying around - just big trees & tall grass. He opened the truck door & set her outside the truck. The grass was about as tall as Kandas. She was running around looking for wood. "Kanda, Call you over." Harvey said. "Come here I've got something for you." He laid her down on the grass. She asked "What are you doing." He said nothing. He started taking her clothes off. All clothes were off including socks & shoes. He began feeling her breasts & crotch. He was shaking & breathing heavy which scared Kandas. Throughout this time Kandas continues to ask "what are you doing". He began kissing her all over he body. "Harvey said" I wanna take care of you like I take care of Mary, Velita and all the other kids." He then took off his clothes. He was wearing jeans & a silver colored belt buckle. She didn't move. She thought - "Velita, Mary? Why would he be doing this to his daughter." She then felt this was wrong - doing this to his daughter isn't right.

He was wearing a navy shirt & was wearing a white T-Shirt.
All of Heaveys clothes were off. He laid on top of her and kissing her. He made her grab on to his penis. She pull her hand off of it & laid her hands. He then put his penis in her vagina. She screamed because it hurt ~~He told her to stop trying to get away~~. He held her

And kept screaming "It hurts" - during this time she was squirming to get away. He grabed her by the forearms and told her to "shut up cause they're going to hear you." She said, "But it hurts." She kept crying. He continued intercourse for a while. He was slobbering (kissing) her all during intercourse. When he pulled his penis out of her she screamed because it really hurt and he covered her mouth & he told her to "shut up" and get dressed." She laid there and didn't move She was shaking and crying - He picked up her clothes and told you to get dressed. Then he began to get dressed. He put his pants on first - then socks & shoes - T-Shirt & shirt and after the T-Shirt & shirt went on he did up his zipper & his belt. She was getting dressed about the same time. She was crying and he told her to "Quit crying - the next time it won't hurt as bad.

SENATE JUDICIARY COM
EXHIBIT NO. 2
DATE 022185
BILL NO. SB 412

Then she got up + walking towards the truck (pickup) - she was still crying. He picked her up. She said "Put me down." And she was hitting him while saying - Put me down - put me down. (several times) He threw her in the pickup. He got in the pickup turned the truck around + drove. Talk on the same road. He said "Quit your crying." She didn't. He pulled up by the house and said "You better quit your crying, they're going to ask what happened to you." She was sitting over by passenger side - she opened the door and fell out. She ran behind the truck + over to the house. As she got to the screen door he was hollering, "Whit" - She walked in + grabbed Mary. and She was crying. Harvey came in. Mary asked Harvey why was she crying. He said, "She fell down." Mary held her and got up + got her a glass of milk. Kendas spilled the milk because she was shaking. Mary cleaned it up and asked her if she wanted to go to bed. She said "Yes." During this time Harvey sat right across the table

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 03/2/85
BILL NO. SB 412

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 022185
BILL NO. SB 412

and stared at her with a dirty look. - (squinted eyes.) Mary took her up to the bedroom (Valita) She got her pajamas out of her suitcase. Mary went to put off her t-Shirt. Kandas pulled away because Mary grabbed her arms like Harvey did. Mary said, "Don't you want to put your pajamas on?" Kandas said "No because I'm cold." Mary said "Are you sure?" Kandas said "Yes because I'm cold." Mary said "Ok." Mary picked her up & laid her on the bed - tucked her in the bed & kissed her on the Lt. cheek - She was rolled over laying on her Rt. side (Valita was not in the room.) She said "good night" - She turned out the light. Kandas screamed at her to put the light on. Mary turned the light on. She walked out & closed the door. Valita walked in the room a few minute & put her pajamas on & got in bed. She asked Kandas why she didn't have her pajamas on. She told her that she was cold" - She was still shaking. Valita asked her what was wrong Kandas said "Nothing." Valita got up and shut the light off. Kandas got real scared when Valita turned off the light. but Kandas didn't

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 02/2/85
BILL NO. SB 412

want to say anything. ~~She~~ Kandas went to sleep. Valita shook her because Kandas was crying in her sleep. Valita said, "Kandas wake up - You must have had a bad nightmare." Kandas grabbed onto Valita. Valita said "Do you want to talk about it?" She said "No." Kandas grabbed on to Valita. Valita had her arms around her and rocked her. During this she was still crying + cried herself back to sleep.

In the morning Kandas got up and changed clothes. After going into the bathroom Kandas noticed blood. She went back + was changing clothes in the room, Valita saw the blood. She said, "Do you have your period." Kandas looked at her like "What is that." She didn't know what she was talking about. Valita had her clothes picked out. She got dressed and stayed up in the room. After ~~she~~ she got dressed Valita asked her if, "Don't you feel good." Kandas said "No" - Valita went down + told Mary. Mary came up and felt her forehead and asked if she wanted to stay home or go to school

EXHIBIT NO. 2
DATE 022185
BILL NO. SB H12

Kandas

She said - "I want to go to school."
She & Valita got on the bus. She sat with Valita on the bus. Valita & Wade Kissel talked on the bus. Steve Eyolson got on the bus. He always teased her and put his arm around her & said "Do you wanna go out with me." He grabbed her around the shoulders & tried to kiss her on the cheek. She pulled away from him and grabbed onto Valita. She was crying. Valita put her around Kandas & held her. Valita told Steve to "knock it off."

When they got to school, Valita walked Kandas to the 1st grade entrance. Kandas leaned up against the corner and stood there. Deena Nielsen came over to her and asked Kandas if she wanted to play. She said "No." She said, "Why." Kandas said, "Because I don't feel like it."
Kandas got in trouble with the teacher. She thinks it's because she wasn't paying attention. She got up & went into the bathroom & she started crying & was crying. The teacher was asking the kids what story did they want to read. One story was Red-Riding Hood - the other was about a Tiger. (They had a choice of 3 stories to choose from.)
(Kandas remembers he had springs in his feet because he bounced around.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 022185
BILL NO. SB 412

The kids sped Thursday I went to read Red Riding Hood. They expected to hear Tiger story. The teacher began reading the story. She hadn't finished the story. She went over to the bathroom door. She asked, "Open the door, What was wrong?" She said nothing, she kept on crying. The teacher ~~got mad and said~~ said "Open this door right now." Then Kandra opened the door & came out & sat by the toilet and teacher came & knelt by you & asked "Kandra, what's wrong, don't you feel good" Kandra & yes, Then she asked if you wanted to go to office and call your mom & dad or stay down?" Kandra "I want to be in class" Teacher - "Who are you staying with?" Kandra - "Valerie Ann" teacher "Do you want to call them? Kandra "No I'll stay down" Can you see? Kandra "yes" - Teacher took her to Tiger right across the hall - Teacher took her in and Mrs Hurst was sitting at her desk - Teacher said "Kandra is not feeling good" Mrs Hurst said O.K. Kandra still crying laid down in the bathroom Then Mrs Hurst came over and hugged you. She left Kandra & left the door open.

I then blew bubbles in the air and said "You have to catch the bubbles" Karsten got a good look at them - then Karsten would try to pop them - get your hands, pretend to pop (throw right hand forward) Teacher asked if you felt any better - Karsten "No" She reached to get on her and a wanted to Quite - Then Valerie got on and lifted her hand up - Karsten said "No" Valerie put her down and Karsten & she fell asleep. Got to Otter and Valerie woke up. Karsten went right upstairs & fell asleep with diapers - Not Reg Karsten went home.

~~A couple months~~ -

2nd time Same place -

3rd time at Mama home -

2nd year - 1st grade -
Dana Nielsen
Deanna Ruffato
Robyn Osborne was in her class
Karen Swenson -

and written by Nicole Mann
First part written by Nikki Sam
Story from Chandra Mann

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 022185
BILL NO. SB 412

Senator Towe stated he accepts the argument the death penalty is not in any way a deterrent to criminal activity. He thinks it is a mistake to have the state take people's lives because it cheapens life, and for these reasons, he cannot support the bill. Senator Blaylock contended that if you could deter criminal conduct by severity of punishment, we could have stopped it a long time ago. If this is what we are saying this bill is going to deter, we are kidding ourselves. We should at least say as a society, we want vengenance and revenge. Senator Crippen stated he doesn't like taking anyone's life, but we have the death penalty on the books for certain offenses. That is the law right or wrong. We are not discussing that at this time because it has been decided in the past. We are finding ourselves in a real serious problem with drugs. He doesn't know if this will help, but he cannot envision where it will hurt. As long as it is discretionary for that person who comes in and sells drugs and makes a livelihood out of it. For that reason, he would say this rightfully belongs in those categories that we have set up for taking someone's life. The motion to recommend SB 364 DO PASS AS AMENDED carried (see roll call vote attached as Exhibit 3).

ACTION ON SB 412: Senator Blaylock stated he thinks this would make sense the judge could make them get treatment, but to put them in jail is useless. Senator Towe moved SB 412 be recommended DO NOT PASS. Senator Daniels stated he is in favor of a mandatory 30-day period. He believes 90% of these cases involve prominent citizens that weasel their way out of going to jail. If they have a short period in the slammer to think about what they have done, they may come to the realization they need help. He believes if they go to treatment thinking they don't need it, the treatment will do them no good. The motion to recommend SB 412 DO NOT pass failed with Senators Crippen, Towe, and Yellowtail voting in favor. Senator Daniels moved SB 412 be amended as follows:

Page 4, line 2.
Following: "46-18-222,"
Insert: "if the victim were less than 16 years old,"

Page 4, lines 4 and 5.
Following: "45-5-504," on line 4
Strike: "or"
Following: "45-5-505"
Strike: remainder of line 4 through "old" on line 5
Insert: ","

The motion carried unanimously. Senator Daniels moved SB 412 be recommended DO PASS AS AMENDED. The motion carried with Senators Blaylock, Mazurek, Towe, and Yellowtail voting in opposition.

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 02238

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

STANDING COMMITTEE REPORT

February 23 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 412

first reading copy (white color)

MANDATORY 30 DAYS IN JAIL FOR CERTAIN CHILD ABUSE OFFENSES

Respectfully report as follows: That SENATE BILL No. 412

be amended as follows:

1. Page 4, line 2.
Following: "46-18-222,"
Insert: "if the victim were less than 16 years old,"

2. Page 4, lines 4 and 5.
Following: "45-5-504," on line 4
Strike: "or"
Following: "45-5-505"
Strike: remainder of line 4 through "old" on line 5
Insert: ","

AND AS AMENDED
DO PASS

XXXXXXXXXX

Senator Joe Mazurek Chairman.

non-severability clause being added to the bill. He is concerned that we have a funding mechanism at the beginning and an additional obligation at the end. If we lose the funding mechanism, I don't want to be stuck with the fiscal obligation.

Rep. Keyser asked what Mr. Deschamps thought of exempting municipalities from the bill. Mr. Deschamps said the problem is with the fiscal impact. If municipalities are exempt, he doesn't know what it will do to the revenue.

Rep. Brown wanted to know how Mr. Deschamps' amendments affect the fiscal note to this bill. Mr. Deschamps said that the cost will actually be reduced because the fiscal note was prepared with the idea that full-time county attorneys would be changed. Because the full-time is excluded, we will see a reduction in the fiscal impact. In response to another question, Mr. Deschamps said he has not seen the revised fiscal note of March 7th.

In response to a question, Mr. Racicot feels it is clear in this bill that a parking violation will not be affected by this legislation. However, Mr. Racicot can see where a parking ticket might apply if the person who receives the ticket refuses to pay the fee.

There being no further questions, the hearing was closed on SB 116.

CONSIDERATION OF SENATE BILL NO. 412: Senator Ed Smith, Senate District #10, chief sponsor of SB 412, testified. This is an act to require 30 days to be served under a sentence for committing certain criminal offenses amount to child abuse. He informed the committee that this legislation was brought about by the request of the Northeast Montana Child Sex Abuse Task Force. Some of the members of that Task Force would have liked to have testified on the bill but were unable to do so because of the long distance involved in coming from Plentywood. He told the committee how he got personally involved in this particular issue.

There were no proponents or opponents, and Senator Smith closed.

In response to a question asked by Rep. Miles, Senator Smith said that this legislation would force the judge to give the offender at least 30 days in jail. Rep. Miles asked if section 46-18-222 would apply to the mandatory 30 day sentence. It was the intention of the committee to clarify that this section does not apply to the first 30 days of such imprisonment.

There being no further questions, the hearing closed on SB 412.

voice vote.

Rep. Addy moved to amend page 4, following line 13, by striking subsection (b) in its entirety. The motion was seconded by Rep. Mercer and carried unanimously. Rep. Addy further moved that SB 451 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Brown.

Rep. Mercer moved to amend page 4, line 9 following "who" by inserting "requests notification and". Rep. Hannah spoke against this amendment, and said it allows the county attorney to weasel out of this whole law. He again said that he doesn't feel it will create an undue hardship on anybody. Rep. Hammond seconded the motion, and it failed on a voice vote. Rep. Addy further moved that SB 451 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Gould. Rep. Mercer moved a further amendment on page 3, line 7 by striking "routinely" and on page 3, line 20 by striking "routinely". He doesn't feel this language adds anything. The motion was seconded by Rep. Brown and carried with Rep. Bergene dissenting. Rep. Addy moved that SB 451 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara and carried on a voice vote with Rep. Hammond dissenting. Rep. Addy agreed to carry the bill on the House floor.

ACTION ON SENATE BILL NO. 412: Rep. Mercer moved that SB 412 BE CONCURRED IN. The motion was secondee by Rep. Darko and further discussed.

Rep. Mercer feels that if someone lacks the mental capacity to be convicted of an offense, that is one thing -- but if he/she have enough mental capacity to be convicted, then a judge ought to be able to sentence him/her. Rep. Mercer moved to delete on page 4, line 2 following "(7)" the word "Except" through "IF" because that is the section which removes the mandatory sentence. Furthermore, he wished to include in the bill that section 46-18-222 does not apply to the first 30 days of such imprisonment. He further wished to add the rape statute, §45-5-503 following §45-5-502(3), on line 5 of page 4. Furthermore, he wished to strike on page 4, lines 6 and 7 "if" through "old" because the reference to under 16 years old has moved up on lines 2 and 3. Therefore, it applies to any victim less than 16 years old. The amendments are really aimed at a person who gets a two-year deferred, two-year suspended, five-year deferred, five-year suspended sentence, commented Rep. Mercer. If the Court suspends a sentence, at least 30 days of it ought to be served in jail. The motion was seconded by Rep. Gould. The question was called on the motion to amend, and it carried unanimously. Rep. Mercer further moved that SB 412 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara and carried unanimously. Rep. Nathe will carry the bill on the floor.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/25/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL NO. SB 116 (Sen. Aklestad); SB 412 (Sen. Smith); ~~SB 433 (Sen. Norman);~~ SB 451 (Sen. Mazurek); ~~HJR 44 (Rep. Winslow)~~

DATE March 25, 1985

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Robert L. Deschamps III	Mont. Co. Atty. Assn.	116 ✓	451 ✓
Ed McLean	" "	116 ✓	
Scott Graham	Missoula Police Dept.	116 ✓	
Harriett Riley	Missoula Co. Atty.		451 ✓
Gerry M. Higgins	Golden Valley Co. Atty	116 ✓	
John L. Pratt	Montana County Attorneys Assn	116 ✓	
D. Gregory Smith	Carroll College Faculty		
Katie O'Connor	" "		
Chris D. Tweeten	Attorney General	433	
[illegible]	Stillwater Co. Atty.	116 ✓	
John Flynn	Beaverhead Co. Atty.	116 ✓	
Jim Jensen	MT. Magistrates Ass'n.	[illegible]	116
Ed Smith	[illegible]	412 ✓	
D. Morris	MTC.	116	
Robert M. McCarthy	Butte-Silver Bow Co. Atty	116 ✓	
Jan T. Landoe	Mt. Public Defenders	433	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

March 25 1995

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 412

Third reading copy (Blue color)

MANDATORY 30 DAYS IN JAIL FOR CERTAIN CHILD ABUSE OFFENSES

Respectfully report as follows: That Bill No.

be amended as follows:

1. Page 4, line 2.
Following: "(7)"
Strike: "Except" through "IF"
Insert: "IF"

2. Page 4, line 5.
Following: "45-5-502(3),"
Insert: "45-5-503,"

3. Page 4, line 6.
Following: "45-5-507"
Strike: "IF" through "old" on line 7.

4. Page 4, line 8.
Following: "suspended."
Insert: "Section 46-18-222 does not apply to the first 30 days of such imprisonment."

DO PASS
AND AS AMENDED,
BE CONCURRED IN

REP. TOM ROMAN Chairman.

STATE PUB. CO.
Helena, Mont.